

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANGELO LEE BAKER,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2013

No. 312075

Jackson Circuit Court

LC No. 11-005023-FC

Before: MURRAY, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Defendant Deangelo Lee Baker appeals as of right his convictions for assault with intent to rob and steal being armed, MCL 750.89, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to 15 to 30 years' imprisonment for his assault conviction and two years' imprisonment for his felony-firearm conviction, to be served consecutively. We affirm.

Nathaniel Scott was in his car in the parking lot of an apartment complex in the city of Jackson. Defendant and his friend robbed Scott, and all three began wrestling to obtain control of a gun. Defendant eventually obtained control of the gun and shot Scott. At his arraignment, the court explained the charges and penalties to defendant. Halfway through trial, defendant requested to represent himself *in propria persona*, and the court granted his request. The trial resumed, and the prosecution called Cierra Rogers, defendant's former girlfriend, as a witness. After deliberations, the jury found defendant guilty of assault with the intent to rob while armed and felony-firearm.

Defendant first argues that his waiver of counsel was equivocal and defective. This argument is properly preserved because defendant requested a waiver, and the court found there was a knowing and voluntary waiver of counsel. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382-383; 741 NW2d 61 (2007).

Whether defendant gave a knowing, intelligent, and voluntary waiver of counsel is a question of law and fact. *People v Williams*, 470 Mich 634, 640; 683 NW2d 597 (2004). This Court reviews the record de novo to determine if the trial court's factual findings were clearly erroneous. *Id.* Before granting a request, a court must ensure that (1) the request was unequivocal; (2) the request was knowing, intelligent, and voluntary; and (3) the court was "satisfied that the defendant will not disrupt, unduly inconvenience, and burden the court or the

administration of court business.” *Id.* at 642. A trial court must also substantially comply with the court rules that require the trial court to (1) “advise the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation[;]” and (2) “offer the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.” MCR 6.005(D). Under MCR 6.005(E), a court must advise a defendant of his right to counsel at each subsequent proceeding.

We hold that defendant’s request was unequivocal, knowing, voluntary, and intelligent. The trial court asked defendant if he wanted to represent himself multiple times, and defendant responded affirmatively. While defendant argues that forcing him to choose between keeping his current attorney and representing himself shows that his request was equivocal, we disagree. After defendant’s request for another attorney was denied, the trial court asked defendant additional questions, and defendant stated that he wanted to represent himself. See *People v Russell*, 471 Mich 182; 684 NW2d 745 (2004). Further, the court explained that defendant was proceeding without knowledge of legal rules and that defendant’s own ineffective assistance of counsel could not be a basis for appeal. The court was also “satisfied that the defendant [would] not disrupt, unduly inconvenience, and burden the court or the administration of court business[;]” *Williams*, 470 Mich at 642, as it stated, “[I]f you’re disruptive in any way in these proceedings I’ll deal with that, and I will recall Mr. Berkemeier so that you understand that also.” Defendant’s request to represent himself in lieu of counsel was thus unequivocal, knowing, voluntary, and intelligent.

The trial court likewise satisfied the requirements of MCR 6.005(D). Defendant was advised of “the charge[s], the maximum possible prison sentence[s] for the offense[s], [and] any mandatory minimum sentence required by law” at his arraignment, while at trial the court explained the “risk involved in self-representation” and offered defendant the “opportunity to consult with a retained lawyer.” MCR 6.005(D); see also *Williams*, 470 Mich at 642-643; *People v Adkins (After Remand)*, 452 Mich 702, 731; 551 NW2d 108 (1996), overruled in part on other grounds *Williams*, 470 Mich at 641 n 7. Finally, MCR 6.005(E) is inapplicable because there was no subsequent proceeding after defendant waived his right to counsel. Defendant’s multi-day trial was a single proceeding, and the plain language of the court rule does not require defendant to be advised of his right to counsel each day. In conclusion, defendant’s request was unequivocal, knowing, voluntary, and intelligent.<sup>1</sup>

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<sup>1</sup> This case is unlike *Russell*, 471 Mich at 192-193, in a critical sense. In *Russell* the defendant expressed that he did not want to represent himself, opining that he was forced into it by the trial court. Here, after raising his dissatisfaction with his lawyer during trial, defendant was presented with the option of representing himself and immediately agreed that that was how he wanted to proceed. Although defendant also stated his mother was looking to retain another attorney, he had not done so, and it was the middle of trial when defendant raised this issue. The trial court was within its discretion in denying the request for a substitute counsel at this late stage of trial. See *Adkins*, 452 Mich at 724-725; *People v Buie (On Remand)*, 298 Mich App 50, 67; 825 NW2d 361 (2012) (quotation marks and citation omitted) (“The decision regarding substitution

Defendant next argues that prosecutorial misconduct occurred and resulted in the denial of defendant's right to a fair trial. This argument was not properly preserved because defendant did not object to any of the three instances of alleged misconduct. *People v Unger*, 278 Mich App 210, 234; 749 NW2d 272 (2008). We normally review claims of prosecutorial misconduct "de novo to determine if the defendant was denied a fair and impartial trial." *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004). However, we review unpreserved issues for plain error that affects the defendant's substantial rights. *Id.* at 454.

First, we hold that even if the prosecution's inquiry into Rogers' fear of testifying was improper, the error did not affect defendant's substantial rights. *Thomas*, 260 Mich App at 454. The inquiry consisted of only two questions and answers, and Rogers did not expand on this testimony any further. The prosecution presented other witnesses and evidence that established defendant's guilt, and any error could have been cured by a timely objection. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001).

Second, we hold that the prosecution did not improperly vouch for Rogers' testimony during closing arguments. "[A] prosecutor may comment on his own witnesses' credibility during closing argument, especially when there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes." *Thomas*, 260 Mich App at 455. At trial, Rogers testified that she did not hear a telephone call between defendant and his friend that inferred defendant was innocent. Later, defendant testified that Rogers did hear the alleged telephone call. During its closing argument, the prosecution argued that Rogers had no incentive to lie. The prosecution's remarks were proper because there was conflicting evidence.

Third, we hold that the prosecution did not improperly ask defendant to comment on Rogers' truthfulness. A defendant is not "harmed by questioning the veracity of one other witness" when the defendant also maintains that some witnesses were lying. *Knapp*, 244 Mich App at 384-385. Defendant has not established any plain error that affected his substantial rights.

Affirmed.

/s/ Christopher M. Murray  
/s/ Pat M. Donofrio  
/s/ Mark T. Boonstra

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of counsel is within the sound discretion of the trial court and will not be upset on appeal absent a showing of an abuse of that discretion.").